

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 KENNETH FRIEDMAN,

Case No.: 3:17-cv-00433-MMD-WGC

4 Plaintiff,

Order

5 v.

Re: ECF Nos. 57, 68

6 ISIDRO BACA, *et al.*,

7 Defendants.
8

9 Before the court are motions for leave to file Plaintiff's medical records under seal filed by
10 Defendants and Plaintiff. (ECF Nos. 57, 68.) Plaintiff also seeks leave to have his reply brief filed
11 under seal.

12 In these motions, the parties seek to file under seal exhibits containing Plaintiff's medical
13 records, including psychiatric records, in connection with briefing on Plaintiff's temporary
14 restraining order and preliminary injunction. Plaintiff also seeks to file his reply brief under seal
15 because it has direction quotations and references to his mental health records.

16 "Historically, courts have recognized a general right to inspect and copy public records and
17 documents, including judicial records and documents." *Kamakana v. City and County of Honolulu*,
18 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). "Throughout
19 our history, the open courtroom has been a fundamental feature of the American judicial system.
20 Basic principles have emerged to guide judicial discretion respecting public access to judicial
21 proceedings. These principles apply as well to the determination of whether to permit access to
22 information contained in court documents because court records often provide important,
23 sometimes the only, bases or explanations for a court's decision." *Oliner v. Kontrabecki*, 745 F.3d

1 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165,
2 1177 (6th Cir. 1983)).

3 Documents that have been traditionally kept secret, including grand jury transcripts and
4 warrant materials in a pre-indictment investigation, come within an exception to the general right
5 of public access. See *Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of
6 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The presumption
7 of access is 'based on the need for federal courts, although independent—indeed, particularly
8 because they are independent—to have a measure of accountability and for the public to have
9 confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler Group, LLC*, 809
10 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States*
11 *v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Ct.*,
12 *D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

13 There are two possible standards a party must address when it seeks to file a document
14 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,
15 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only when
16 it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without relying on
17 hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must
18 "'conscientiously balance[] the competing interests of the public and the party who seeks to keep
19 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the sound
20 discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)).
21 "Examples include when a court record might be used to 'gratify private spite or promote public
22 scandal,' to circulate 'libelous' statements, or 'as sources of business information that might harm
23 a litigant's competitive standing.'" *Id.*

1 The good cause standard, on the other hand, is the exception to public access that has been
2 typically applied to "sealed materials attached to a discovery motion unrelated to the merits of the
3 case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which governs
4 the issuance of protective orders in the discovery process: The court may, for good cause, issue an
5 order to protect a party or person from annoyance, embarrassment, oppression, or undue burden
6 or expense.'" *Id.*

7 The Ninth Circuit has clarified that the key in determining which standard to apply is
8 whether the documents proposed for sealing accompany a motion that is "more than tangentially
9 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
10 compelling reasons standard is applied. If not, the good cause standard is applied.

11 Here, the parties seek to file exhibits under seal in connection with Plaintiff's motion for
12 temporary restraining order and preliminary injunction. An analysis of this motion requires the
13 court to determine whether Plaintiff has a likelihood of success on the merits; therefore, the records
14 are clearly "more than tangentially related to the merits of a case." Therefore, the compelling
15 reasons standard applies.

16 This court, and others within the Ninth Circuit, have recognized that the need to protect
17 medical privacy qualifies as a "compelling reason" for sealing records. *See, e.g., San Ramon*
18 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL89931, at *n.1 (N.D. Cal. Jan. 10,
19 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL4715793, at * 1-2 (D. HI. Nov. 15,
20 2010); *G. v. Hawaii*, 2010 WL 267483, at *1-2 (D.HI. June 25, 2010); *Wilkins v. Ahern*, 2010
21 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare Alliance Corp.*, 2009
22 WL 1212170, at * 1 (D.Ariz. May 4, 2009). This is because a person's medical records contain
23 sensitive and private information about their health. While a plaintiff puts certain aspects of his

1 medical condition at issue when he files an action alleging deliberate indifference to a serious
2 medical need under the Eighth Amendment, that does not mean that the entirety of his medical
3 records filed in connection with a motion (which frequently contain records that pertain to
4 unrelated medical information) need be unnecessarily broadcast to the public. In other words, the
5 plaintiff's interest in keeping his sensitive health information confidential outweighs the public's
6 need for direct access to the medical records.

7 Here, the referenced exhibits contain Plaintiff's sensitive health information, medical
8 history and treatment records, including his psychiatric records. Balancing the need for the public's
9 access to information regarding Plaintiff's medical history, treatment, and condition against the
10 need to maintain the confidentiality of Plaintiff's medical records weighs in favor of sealing these
11 exhibits. Therefore, the parties' motions (ECF Nos. 57, 68) are **GRANTED**.

12 **IT IS SO ORDERED.**

13 Dated: March 20, 2019.

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William G. Cobb
16 United States Magistrate Judge
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